

REMARKS/ARGUMENTS

Claims 104-126, 128 and 130 are currently pending. All claims were rejected. The claims have been amended as noted above. Reexamination and reconsideration of the claims, as amended, are respectfully requested.

Claim Rejections - 35 U.S.C. §103(a):

Claims 104-126, 128 and 130 were rejected as allegedly being obvious over US Patent No. 2,430,229 to Kelsey ("Kelsey") in view of US Patent No. 5,201,007 to Ward ("Ward"). The rejections of independent claim 104 and claims 105-126, which depend thereon, are traversed in part and overcome in part as follows.

Independent claim 104 recites in part, "*first concentric acoustic seal ... to flexibly engage the wall of the bony part of the ear.*" The Examiner argues that flange 25 of Kelsey provides the "*first concentric acoustic seal.*" Flange 25, however, cannot "*flexibly engage the wall of the bony part of the ear canal.*" As clearly seen in Figure 11, earpiece or plug 10 of Kelsey only extends minimally into the ear canal and is in contact with only the cartilaginous part of the ear canal. Also, earpiece 10 has a flared portion 26, which limits the depth to which earpiece 10 can be inserted in the ear canal (col. 3, ln. 54-58). Thus, no part of the device of Kelsey would ever engage the wall of the bony part of the ear canal.

To clarify this distinction, claim 104, from which claims 105-126 depend, has been amended to recite in part:

"wherein the first and second concentric acoustic seals are spaced-apart on the sound conduction tube so that the second seal is in the cartilaginous part of the ear canal when the first seal is positioned in the bony part of the ear canal."

Support for the amendments can be found throughout the original specification as filed, for example from pg. 16, col. 4 to pg. 18, col. 8 and corresponding figs. 4 and 5.

Neither Kelsey nor Ward provide a hearing device with two concentric acoustic seals, one of which is placed in the cartilaginous part of the ear canal when the other is placed in

the bony part. As explained previously, no part of the device of Kelsey would ever engage the bony part of the ear canal. As explained in the Reply of October 24, 2007, Ward fails to disclose the required "*second concentric acoustic seal*." Ward only provides a single flanged tip or seal 70 positioned deep in the ear canal (Col. 5, ln. 16-23). Second tube 82, which is located in the cartilaginous part of the ear canal, includes passageway 85. Ward specifically teaches that passageway 85 is a sound conduction pathway open at both ends and that support members 90 should not block sound transmission therethrough (col. 6, ln. 50-61) No attenuation of sound can be provided. Thus, Ward fails to teach or otherwise suggests the limitation "*second concentric acoustic seal having a relatively larger occlusion-relief vent extending therethrough and providing an attenuation of sound at frequencies between 125 Hz and 4000 Hz.*"

For at least the above reasons, Kelsey and Ward, alone or in combination, fail to teach or otherwise suggest each and every element of independent claim 104. Thus, *prima facie* obviousness cannot be established and claim 104 and 105-126, which depend thereon, are allowable over the cited references.

Independent claim 128 was likewise rejected over Kelsey in view of Ward. For similar reasons to those explained above, Applicants submit that claim 128 is allowable over the Kelsey and Ward. For additional clarity, claim 128 has been amended to recite in part:

"wherein the at least one appendage and the another appendage are spaced-apart on the sound conduction tube so that the another appendage is in the cartilaginous part of the ear canal when the at least one appendage is positioned in the bony part of the ear canal."

Independent claim 130 was likewise rejected over Kelsey in view of Ward. For similar reasons to those explained above, Applicants submit that claim 130 is allowable over the Kelsey and Ward. For additional clarity, claim 130 has been amended to recite in part:

"means operatively associated with the tube portion and the hearing device for acoustically sealing a region between a ~~in the~~ cartilaginous area of the ear canal and a bony region in the ear canal and concurrently directing occlusion sounds away from the eardrum, when worn by the user."

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,

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